IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4243 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M M LAHORI RETIRED ASST. DIRECTOR FORENSIC SCIENCE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4243 of 2001

PARTY-IN-PERSON for Petitioner No. 1

MR KOGJE, AGP for Respondent No. 1-2

MR KM PATEL for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/05/2003

ORAL JUDGEMENT

The petitioner herein is a retired Government employee. The petitioner has retired from service with effect from. 30-9-1996 on attaining the age of superannuation. The petitioner has been paid the pension

for the service, which he has rendered between 4-10-1973 to 30-9-1996. The grievance of the petitioner is that his past services for the period between 20-4-1967 to 3-10-1973 is not considered for the purpose of pension and this petition is filed with a prayer that the services rendered by the petitioner between 20-4-1967 to 3-10-1973 also should be considered for the purpose of fixation of pension and the pension should be revised accordingly.

2) Heard party-in-person, Mr.M.M.Lahori, learned AGP, Mr.Kogje on behalf of the State and Mr.K.M.Patel for respondent No.2.

3) The petitioner has submitted that he was appointed in the Government service on 20th April, 1967 and served upto 17-10-1970 as a Junior Scientific Assistant in Blood Plazma Unit, State of Gujarat. The case of the petitioner is that, thereafter, he applied through proper channel and was subsequently appointed at National Institute of Occupational Health (N.I.O.H.) on 19-10-1970. He served at the said institution upto 3-10-1973. Accordingly, the petitioner served with N.I.O.H. for the period between 19-10-1970 to 3-10-1973. The petitioner, thereafter, again applied through GPSC and was appointed in the State service in Forensic Science Laboratory from 4-10-1973. Ultimately, as stated earlier the petitioner has retired from State service on attaining the age of superannuation with effect from 30-9-1996. At the time of his retirement, he has been paid pension considering his service period between 4-10-1973 to 30-9-1996. The grievance of the petitioner is that his earlier services, rendered between 20-4-1967 upto 3-10-1973 is required to be counted for the purpose of giving pensionary benefits. This petition is accordingly filed by the petitioner ventilating the aforesaid grievance.

4) In order to substantiate his say, the petitioner has submitted that in October 1970, he joined the services of N.I.O.H., by applying through proper channel. It is submitted by him that he was required to tender his resignation in view of the technical reasons. It is, therefore, submitted that the period between 20-4-1967 to 19-10-1970 should be counted and included for the purpose of pensionary benefits as according to him, he joined N.I.O.H. after applying through proper channel. It is also submitted by the petitioner that subsequently on 4-10-1973, he joined State services at Forensic Science Laboratory and at that time also, he had applied through proper channel, while he was in N.I.O.H. (which is a

body under the Central Government) and he was required to tender his resignation at that stage on technical ground. It is submitted that subsequent period between 19-10-1970 upto 3-10-1973 is also required to be counted for the purpose of pensionary benefits. The party-in-person also further submitted that so far as N.I.O.H. is concerned it is a Government body as it is under the Central Government. So the entire service period from inception of his service with the State, i.e. 20-4-1967 should be treated to be continuous service throughout and entire period should be counted for the purpose of giving pensionary benefits. It is submitted by the party-in-person that he was required to give resignation due to technical reasons and when he has applied through proper channel at both the stages, i.e. at the stage when he joined Central Government department, as well as when he joined the State service and, therefore, his tendering resignation should not be taken into account and said period should not be considered as break in service. In view of the aforesaid submissions, it is prayed by the party-in-person that the Government should be directed to re-fix his pension by giving benefit of earlier period, i.e. from 20-4-1967 to 3-10-1973, for the purpose of pension.

5) This petition is resisted by the State Government. On behalf of the State Government Mr.K.L.Tabiyar, Under Secretary, Home Department has filed the affidavit in reply. In para 4 of the said reply, it is stated that the petitioner had joined his duty as Junior Scientific Assistant at Blood Plazma Unit, Civil Hospital, Ahmedabad on 24th June, 1967 on temporary basis. It is further stated in the affidavit in reply that the petitioner, thereafter continued on the same post and had worked till 24-9-1968. The petitioner was, thereafter transferred to Chemical Analyzer Laboratory, Junagadh as Laboratory Technician purely on temporary basis. It is further stated in the affidavit in reply that the appointment of the petitioner was purely temporary and it was liable to be terminated without notice. It is further stated in the affidavit in reply that the petitioner thereafter, after serving for two years and odd gave his resignation on 17-10-1970. Thereafter, he had joined the services at N.I.O.H., Ahmedabad as Chemical Analyzer. The petitioner, thereafter, once again gave resignation on 3-10-1973 and subsequently joined the Forensic Science Laboratory as Scientific Assistant on 4-10-1973. It is also stated in the reply that the petitioner had joined the said services through direct selection through G.P.S.C. Further posting of the petitioner from various

departments of the State is also narrated in the said affidavit in reply. Ultimately, the petitioner had retired on 30-9-1996 as Assistant Director. In the affidavit in reply reliance is placed on Rule 250 of the Bombay Civil Services Rules, according to which when a Government employee gives resignation from service, it would amount to interruption of service. Therefore, it is the say of the Department that in view of the resignation of the petitioner, the aforesaid past services rendered by him for the period between 20-4-1967 to 3-10-1973 cannot be counted for the purpose of giving pensionary benefits to the petitioner and on the same ground the petition is resisted by the State Government.

6) So far as the first grievance of the petitioner regarding computation of earlier period between 20-4-1967 to 17-10-1970 is concerned, the say of the petitioner is that he had to give resignation because of technical reasons and he had applied through proper channel at that time. However, it is required to be noted that the say of the department is that service record of the petitioner is not traceable. It is also submitted that it is for the petitioner to prove that in 1967 he applied through proper channel and subsequently joined N.I.O.H. In the instant case, so far as the aforesaid period is concerned, i.e., period between 20-4-1967 to 17-10-1970, the petitioner is not in a position to substantiate his say that he had applied through proper channel. Even the learned advocate for respondent No.2, Mr.K.M.Patel has also stated that his department is not having any particulars to show that the petitioner had applied through proper channel. Since there is absolutely no material available, it is not possible for this Court to come to a finding that after applying through proper channel, the petitioner had joined N.I.O.H. It is also required to be noted that even as per the posting order of the petitioner dated 4th July, 1970, which is at page 67 in the compilation, it is clearly mentioned that in 14-5-1970 for the post of Research Assistant, the petitioner is appointed as Research Assistant. As per the said appointment order, it is clear that the petitioner had directly applied and there is no material to suggest that he had applied through proper channel.

7) It is required to be noted that for subsequent period, the petitioner has produced some documents or evidences to suggest that he joined the State service by applying through proper channel. But so far as earlier period as stated above is concerned, there is absolutely no material except the bare word of the petitioner. In such circumstances, so far as claim of the petitioner for

counting the period of his earlier service between 20-4-1967 to 17-10-1970 is concerned, the said prayer cannot be accepted. The question, which requires consideration is whether the service rendered by the petitioner between 19-10-1970 to 3-10-1973 can be counted for the purpose of pensionary benefits. In this connection reference is required to be made to the interim departmental communication, wherein policy decision taken by the Government of India, Ministry of Home Affairs, Department of Personnel Administrative Reforms, New Delhi is reflected. The Finance Department of the State of Gujarat has communicated the decision taken by the Central Government, by informing various departments of the State. The relevant part of the said communication, which is at page 107 in the compilation reads as under:

"2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories : -

(1) Those who having been retrenched from the service of Central/State Governments secured on their own, employment under State/Central Government, either with or without interruption between the date of retrenchment and date of new appointment;

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel/ with proper permission of the administrative authority concerned;

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointment under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (2) is required for administrative reasons for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been

tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued, by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servants in category (3) will, obviously, not be entitled to count their previous service for pension."

8) The party-in-person has submitted that while he was serving with N.I.O.H., he applied through proper channel and he was required to tender his resignation for technical reasons. Therefore, he submitted that his case would fall under para 2 (2) of the above said communication. At this stage, reference is required to be made to certain documents. At page 95 of the compilation, there is a certificate issued by N.I.O.H. dated 14th December, 2000. In the said certificate, it is stated that the petitioner has joined the Institution as Research Assistant on 19th October, 1970 and his application was forwarded through the said office. It is also stated that in order to join the new post, the petitioner tendered his resignation to satisfy the administrative, technical requirements. It is also stated in the certificate that the petitioner's resignation was accepted and he was released from the post of Research Assistant in the afternoon of 3rd October, 1973. It is further stated in the said certificate that the office does not have any objection, if the period of service rendered by the petitioner at N.I.O.H., from 19th October, 1970 to 3rd October, 1973 is counted towards pensionary benefits by the office of Forensic Science Laboratory, Ahmedabad, subject to no financial commitment on the part of N.I.O.H. The said certificate prima facie indicates that the petitioner has resigned from N.I.O.H. on technical grounds and that he has applied through proper channel for the purpose of joining services of the State.

9) Apart from the aforesaid aspect, there is a letter issued by the Chemical Analyzer to Government, Gujarat State, Junagadh, dated 30-5-1970, which is on record at page 69, whereby the petitioner was informed that in case if he is selected for the post applied for then he will have to resign from his present post. The petitioner has also produced a copy of the letter send by him to the Director of N.I.O.H. on 16-2-2001, wherein

petitioner has stated that he was asked to submit the certificate clarifying whether he has received any gratuity from N.I.O.H. The said correspondence is at page 119 in the compilation. Considering the aforesaid certificate of N.I.O.H. as referred above and considering other correspondence on record, I am of the opinion that there is absolutely no justification on the part of the State Government to deny the benefit of pension to the petitioner for services, which he has rendered between 19-10-1970 to 3-10-1973, (the period during which he served with N.I.O.H.). From N.I.O.H. the petitioner has applied through proper channel and was required to give resignation from N.I.O.H., because of some technical reasons. There absolutely no reason not to accept the certificate of N.I.O.H. wherein it is clearly stated by N.I.O.H. that the application of the petitioner was forwarded through the said office and that the petitioner was required to give his resignation to satisfy the administrative/technical requirements. Considering the aforesaid aspect of the matter, there is no justification in denying the pensionary benefits to the petitioner for the aforesaid period. The stand of the State Government in not counting the said period is absolutely unjustified as the petitioner had served with the institution of Government of India and from where he had applied through proper channel and was required to give his resignation on technical grounds. The petition is, therefore, required to be allowed partly. So far as earlier period between 20-4-1967 to 17-10-1970 is concerned, there is nothing on record to suggest that the petitioner had applied through proper channel and that he was required to tender his resignation on technical grounds and, therefore, in my view the petitioner is not entitled to get the benefit of the said period for the purpose of counting the same for pensionary benefits. However, so far as the subsequent period, i.e., from 19-10-1970 to 3-10-1973, is concerned, the petitioner is entitled to get the benefit of pension for the same and the department is directed to count the said period for pensionary benefits.

10) The petitioner is accordingly entitled to get pensionary benefits by ignoring the so called break for the intervening period between 19-10-1970 to 3-10-1973. It is, therefore, held that the service of the petitioner should be counted with effect from 19-10-1970 for pensionary benefits and, thus the petitioner is granted pension for the service rendered by him from 19-10-1970 till 30th September, 1996, i.e., the date on which he has retired on attaining the age of superannuation.

11) The aforesaid period is accordingly to be counted for the purpose of fixing the pension of the petitioner and the State Government is directed to revise the pension of the petitioner accordingly by adding the period between 19-10-1970 to 3-10-1973. The petitioner's pension be accordingly re-fixed in view of the directions given above. It is also required to be noted that even otherwise, the Government has power to condone the break in service in a given case. However, in the instant case, the petitioner is entitled to said pensionary benefits for the said period in view of the policy decision of giving benefit as discussed earlier in this judgement.

12) The party-in-person has submitted that if he has received any amount from N.I.O.H. towards C.P.F., he will re-deposit the said amount with N.I.O.H. immediately and on said re-deposit, the N.I.O.H. is directed to give intimation to the State Government in this connection. The said exercise is to be done by N.I.O.H. by 31st May, 2003 and on such redeposit, without any further delay, after getting appropriate instructions from N.I.O.H., the respondent No.2 is directed to revise pension of the petitioner by counting the aforesaid period as indicated above for the purpose of giving pensionary benefits to the petitioner and whatever amount, which is required to be paid to the petitioner on the basis of such re-fixation of pension, may be paid to the petitioner within a period of one month thereafter. The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

(P.B.MAJMUDAR, J.)

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